LE COPY

Office-Supreme Court, U.S.
FILED
MAR 11 1965
JOHN F. DAVIS, CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM, 1964

No. 977

MARY BENDELARI, *Petitioner*

v.

THE UNITED STATES OF AMERICA, *Respondent*

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF CLAIMS

MARY BENDELARI
Carnegie Hall
New York 19, N. Y.
Pro Se.

PRESS OF BYRON S. ADAMS, WASHINGTON, D. C.

IN THE

Supreme Court of the United States

OCTOBER TERM, 1964

No.

MARY BENDELARI, *Petitioner*

v.

THE UNITED STATES OF AMERICA, *Respondent*

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF CLAIMS

The petition of Mary Bendelari prays that a writ of certiorari issue to review the order of the United States Court of Claims entered in the above entitled case on December 13, 1964, granting defendant's motion for summary judgment dismissing the petition.

The written order of the court below is printed herein.

Jurisdiction of this Court is invoked under 28 United States Code, section 1255(1).

FACTS

As recited in the petition as presented to the United States Court of Claims, petitioner Mary Bendelari filed suit in the Court of Claims in order to collect royalties from the U.S. Government on the basis of her patent 1926429, and under the pertinent sections of the U.S. patent laws, together with her rights under the Clayton Act and Sherman Anti-Trust Act.

In earlier decisions, the petitioner Mary Bendelari was not a participant but Mary Bendelari was told by the person in charge of the Philadelphia Anti-Trust Division of the U.S. Department of Justice that she was considered a part of the case because there would have been no case without her patent. It was the conspiracy about her patent that permitted the U.S. Government to bring the cases to end a condition of business anarchy.

The issue is whether if the Anti-Trust Division of the Department of Justice did not protect Mary Bendelari by making her a party to the case so that in the ordinary course of events her patent could have been extended, then she is without legal redress. It was the meeting of ten men, in conspiracy, about her patent that permitted the U.S. Government action. Also, this will clarify and insure that there has been no tolling of the Statute of Limitations or the patent laws. It would ill-behoove the Government to deny full rights to Mary Bendelari when the Government's action could not have been taken without the courageous stand of Mary Bendelari. In essence, there would have been no case without Mary Bendelari.

As to collecting royalties, as to use by the Government, the fitted sheet made of non-stretchable material has been bought by the Government for use all over the world many times for many years. The Government also sells the sheets in their Post Exchanges all over the world.

In the anti-trust case, which was won against Krasnov, under anti-trust laws, both civil and criminal, Mary Bendelari was the main factor in the Government winning.

In the conspiracy the Government found that people were making the fitted sheet, with patent numbers, in conspiracy with those against Mary Bendelari. The pattern was made from the d awings on her patent. The Philadelphia office of the Anti-Trust Division stated that it was not the policy of the Government to examine conspiracies or drawings or shape of inventions. There could be no conspiracy about a thing unless it has shape, and without shape a patent is nothing.

The Philadelphia office was refusing to investigate the rest of the conspiracy against Mary Bendelari on the use of the shape of her patent. At the same time and in the same department the Government mounted the biggest anti-trust case in the country's history against the General Electric Company based on the shape of the objects priced.

If the Court could clarify that there is Federal Common Law in the Constitution, not as was broadly stated in the case of *Erie* v. *Tompkins,* 1938, that there is no such thing as General Federal Common Law. In that case the majority stated that as regards the Constitution, and Acts of Congress, that the Judicial Act of 1789, still stood, i.e., that there was so ne Federal Common Law. Written as the decision was, it has caused confusion, leading people to believe that the precious common law in the Constitution was lost. It is particularly significant in this case that this be clarified, for a patent is issued on how the invention operates, rather than on the fact of the drawing of the invention.

If you study Article 1, Section 8, paragraph 8, of the Constitution, you will find a coupling of the words, authors, and their writings, inventors and their discoveries. The inventor is the author of the writing in repose, and also the

discoverer of a moving writing, which is the invention in action. If the patent is issued only on the writing in action, then the common law, or Constitutional right to the writing in repose, should be clarified.

Copyright in any writing is automatic by the act of writing. The registration of a copyright is merely so people may file suits. Registration does not grant copyright.

In a case as simple as this one, there are still many questions to be asked, although Mary Bendelari has presumably been granted the protection of her rights in the Constitution. One example is the action of the Government in using the patent in Government installations, without payment of the royalties. Secondly, the role of the Government as business agent for others using her drawings and inventions. Thirdly, the denial of the Government, when the case was in the anti-trust division, to deny her due process of law by only investigating one-half of the conspiracy against her patent.

Mary Bendelari has her own trademark but the Government has bought her constitutional property marked with trademarks belonging to others. A trademark was created to represent the skill of an individual at his trade. What about the advertising of her sheet, by people who had copyrighted those ads of her drawing, and also sold her sheet under other trademarks?

In 1940, Mary Bendelari tried to register her copyright so that people could not advertise her sheet and was refused. Only in 1964 was she permitted to register her drawing of the copyright of the sheet. In the interim thousands of drawings of sheets had been filed by the copyright office for other people than Miss Bendelari. What about the value to Miss Bendelari of her invention? What about the value of her aspirations that produced a thing that has been so useful?

QUESTIONS PRESENTED

1. Whether Petitioner has a forum in which to enforce her rightful claims.

2. Whether under the law of the United States, petitioner is entitled to a remedy to collect a debt which the United States owes to the petitioner, but which the United States has refused to pay.

REASONS FOR GRANTING THE WRIT

It is submitted that it must follow that from a reading of the above or previous material, that the United States Court of Claims erred in its respective conclusions in this case.

Petitioner believes and avers that the questions involved in this case are of such gravity and importance that they justify the exercise of the jurisdiction vested in this Court to issue a writ of certiorari requiring the cause to be brought here for review from the Court of Claims.

Wherefore, your petitioner prays that this Honorable Court will cause the writ of certiorari to be issued pursuant to the power vested in this Court at 28 United States Code 2106.

Respectfully submitted,

MARY BENDELARI
Carnegie Hall
New York 19, N. Y.
Pro Se.

IN THE UNITED STATES COURT OF CLAIMS

No. 109-64

MARY BENDELARI

v.

THE UNITED STATES

Order

This case comes before the court on defendant's motion to dismiss or in the alternative for summary judgment. Upon consideration thereof, together with plaintiff's answer thereto, and without oral argument, it is concluded, on the basis of 28 U.S.C. § 2501 and *Hebern* v. *United States,* 132 Ct. Cl. 344, that plaintiff is not entitled to recover, and

IT IS ORDERED that defendant's said motion be and the same is granted and plaintiff's petition is dismissed.

BY THE COURT

WILSON COWEN
Chief Judge

Oct. 23, 1964

Judge Collins took no part in the consideration and decision of this case.

LE COPY

Office-Supreme Court, U.S.
FILED
SEP 2 1965
JOHN F. DAVIS, CLERK

No. 307

In the Supreme Court of the United States
OCTOBER TERM, 1965

MARIE [illegible], PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF CLAIMS

MEMORANDUM FOR THE UNITED STATES IN OPPOSITION

ARCHIBALD COX,
Solicitor General,
Department of Justice,
Washington, D.C., 20530.

In the Supreme Court of the United States

OCTOBER TERM, 1964

No. 977

MARY BENDELARI, PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF CLAIMS

MEMORANDUM FOR THE UNITED STATES IN OPPOSITION

Petitioner, alleging on information and belief that at unspecified times the United States infringed upon a patent issued her in 1933, filed suit, in 1964, in the Court of Claims, seeking damages in an unspecified amount. The Court of Claims dismissed the action on October 23, 1964, as barred by the statute of limitations (Pet. App. 1a).[1]

[1] Petitioner made timely application for a new trial which was denied on December 11, 1964. The petition was filed on March 11, 1965.

Petitioner's patent expired without renewal in 1950, 17 years after issuance. 35 U.S.C. 154. Accordingly, the six year statute of limitations for infringement actions against the United States in the Court of Claims ran no later than 1956, some eight years before the filing of the action below. 28 U.S.C. 2501; *Gage* v. *United States*, 103 F. Supp. 1022, certiorari denied, 344 U.S. 829.

Petitioner argues that her action was timely on the theory that her patent was extended and the statute of limitations was tolled under 15 U.S.C. 16(b) as a result of her alleged participation, on the side of the government, in an antitrust proceeding commenced prior to the expiration of the patent.[2] Assuming, *arguendo*, that petitioner or her patent was in some way involved in the antitrust actions, the tolling provision of 15 U.S.C. 16(b) is in no way applicable to her action against the United States for patent infringement. The statute of limitations is tolled only with respect to private actions arising under and "based in whole or in part on any matter complained of" as a violation of the antitrust laws. 15 U.S.C. 16(b).[3]

---

[2] Petitioner makes reference in Paragraph "Seventh" of her complaint to two cases involving one Joseph A. Krasnov. One conviction for antitrust violation was affirmed by this Court in 1957. *Krasnov* v. *United States*, 355 U.S. 5. The other case was terminated in 1959 with the entry of a plea of *nolle prosse* (E.D. Pa. Crim. No. 15754).

[3] Section 16(b) provides:

> Whenever any civil or criminal proceeding is instituted by the United States to prevent, restrain, or punish vio-

The decision below is clearly correct and the petition should be denied.

Respectfully submitted.

ARCHIBALD COX,
Solicitor General.

APRIL 1965.

---

lations of any of the antitrust laws, but not including an action under section 15a of this title, the running of the statute of limitations in respect of every private right of action arising under said laws and based in whole or in part on any matter complained of in said proceeding shall be suspended during the pendency thereof and for one year thereafter: *Provided, however,* That whenever the running of the statute of limitations in respect of a cause of action arising under section 15 of this title is suspended hereunder, any action to enforce such cause of action shall be forever barred unless commenced either within the period of suspension or within four years after the cause of action accrued.

☆ U. S. GOVERNMENT PRINTING OFFICE: 1965 76866% 710

LE COPY

Office-Supreme Court, U.S.
FILED
MAY 25 1965
JOHN F. DAVIS, CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM, 1964

No. 977

MARY BENDELARI, *Petitioner*

v.

THE UNITED STATES OF AMERICA, *Respondent*

PETITION FOR REHEARING FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF CLAIMS

MARY BENDELARI
Carnegie Hall
New York 19, N. Y.
Pro Se.

IN THE

Supreme Court of the United States

OCTOBER TERM, 1964

No.

MARY BENDELARI, *Petitioner*

v.

THE UNITED STATES OF AMERICA, *Respondent*

PETITION FOR REHEARING FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF CLAIMS

The copy of the patent number 1926429 will be delivered to the Court.

In passiog, attention is called to the minority report in the Erie Railry case.

The brief of the Solicitor- General is answered by the following.

In 1963 the petitioner did petition Congress for relief in regard, to the injustices, in depriving her of the royalties on her patent.

This Committee on Constitutional rights, examined the petitioner's petition, and stated that Congress would not hear the petitioner until all of the petitioner's rights had been refused by the courts.

The statement of June 1963, by this Committee, presupposes legal rights as of that day, not as noted by the Attorney- General, as having stopped in 1950, at the end of the patent period. This was ascertained by letters from three departments.

Section 6 of the Clayton Antitrust law provides that the Statute of Limitations "shall be suspended in favor of a private litgant who had sustained damage to their property, or business thru the wrongful acts of the defendants, during the pendency of the suit or proceeding by, or on behalf of the United States. The entire provsision is intended to help persons of small means who are injured in their property, or business, by comoinations, or corporations, violating the antitrust laws."

Unless tne Court considers this ,all tne remedies of the petitioner havebeen exhausted. and the petitoner will be denied her full rights in the Constitution unless this Court will give tne petitioner a chance to oe heard.

Tne investigation of the conspiracies against individual inventors , by Congress, went on from Decemoer 1902 until Decemoer 1914. The hearings are most enlightening.

People became virtual slaves deprived of property, civil rights, and even health, continuatally surrounded by fear, so they couldnot seek help, and guidance.and would not protest. There was no comfort unless they gave up their property.

Yet while the petitioner's case was in the antitrust Divison for ten years, exactly the same problem existed. The Justice Department refused to investigate the conspiracy, about the patent of the petitioner , where it related to the patent, tho they had evidence of a conspiracy of lines, in the same conspiracy that came before this court.

The protection of these writings, or lines, is the one right granted in the Constitution to gain the gold right, or worth, of the full use of the value of their work.

The petitioner asks that the balance of evidence about the conspiracy of lines , the patent, denied before by the Justice Department,now be completed.

That there be a pendency of time, from the from the time that the investigation of this conspiracy be denied, and that the patent run in full, til that time has elapsed.

For 165 years we have had government by innuendo, as far as the rights of writings are concerned, which are clearly protected in the Consitution. The reprehensible methods used to deprive, or try to deprive the petitoner are criminal. Rites are not protected in the Consitution. Slavery is denied by the 13, 14, and 15th amendments of the Consitution. The people of this country have suffered overlong from the conspiracy of silence about this.

To gain possession of the petitioner's patent, and other property , the petitioner's health has been wrecked. There is nothing in the Consitution , that permits a state of war against individuals, and a true government of the people would root it out, and not countence it.

The petitioner wishes that all copyrights, patents, trademarks, names, prints, and labels, that have been used with her patent property , be declared her property.

In passing, let it be noted that the first case under the 1914 Clayton Act was adjudicated in New Jersey in 1957, seven years after thepetitioner had taken her patent to the antitrust division to determine what the conspiracy was, against her being able to get the rewards of her patent . The position of the antitrust division, not making the petitoner party to the suit, and thereby bring her patent under the toll provision , is the ineqity, for which the petitioner brings this petition before this honorable Court.

If the Court denies the petitioner's rights as party to the suit, by omission, the court, in effect grants her rights to those whom the Court has held to be in conspiracy against her.

The Grant Jury decided that the consiracy about the petitioner's patent , wouldbe the basis of an antitrust case by the government.

The petitioner notes that the plaintiff was no entitled. to recover. The title to the patent is within her body, making it difficult for the petitioner to see how she could not be entitled to her own patent.

The petitioner would respectfully request, if the Court accepts this case for hearing that the petitioner's rights to her royalties be stated.

Wherfore the petitioner prays that this Honorable Court will issue a writ of certorari, requiring that this case be brought for review, from the Court of Claims.

Respectfully submitted

Mary Bendelari
Carnegie Hall,
New York, 19
Pro Se (italics)